

FIRST REGULAR SESSION

# SENATE BILL NO. 425

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATORS CALLAHAN AND BARTLE.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 570.120, RSMo, and to enact in lieu thereof one new section relating to bad checks, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 570.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 570.120, to read as follows:

570.120. 1. A person commits the crime of passing a bad check when:

(1) With purpose to defraud, the person makes, issues or passes a check or other similar sight order **or any other form of presentment involving the transmission of account information** for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) The person makes, issues, or passes a check or other similar sight order **or any other form of presentment involving the transmission of account information** for the payment of money, knowing that there are insufficient funds in **or on deposit with** that account **for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding**, or that there is no such account or no drawee and fails to pay the check or sight order **or other form of presentment involving the transmission of account information** within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing" means notice of the nonpayment which is actually received by the defendant. Such notice may include the service of summons or warrant upon the defendant for the initiation of the

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

prosecution of the check or checks which are the subject matter of the prosecution if the summons or warrant contains information of the ten-day period during which the instrument may be paid and that payment of the instrument within such ten-day period will result in dismissal of the charges. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

3. The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated in determining the grade of the offense.

4. Passing bad checks is a class A misdemeanor, unless:

(1) The face amount of the check or sight order or the aggregated amounts is five hundred dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued, in which cases passing bad checks is a class **[D] C** felony.

5. (1) In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action pursuant to the provisions of this section shall collect from the issuer in such action an administrative handling cost. The cost shall be **[five] twenty-five** dollars for checks of less than **[ten dollars, ten dollars for checks of ten dollars but less than]** one hundred dollars, and **[twenty-five] fifty** dollars for checks of one hundred dollars **[or more] but less than two hundred fifty dollars**. For checks of **[one] two** hundred **fifty** dollars or more an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for administrative handling costs not to exceed **[fifty] seventy-five** dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that previously authorized in this section. Any revenues that are not required for the purposes of this section may be placed in the general revenue fund of the county or city not within a county. Notwithstanding any law to the contrary, in addition to the administrative handling cost, the prosecuting attorney or circuit attorney shall collect an additional cost of **[one dollar] five dollars** per check for deposit to the Missouri office of prosecution services fund established in subsection 2 of section 56.765, RSMo. All moneys collected pursuant to this section which are payable to the Missouri office of prosecution services fund shall be transmitted at least monthly by the county treasurer to the director of revenue who shall deposit the amount collected pursuant to the credit of the Missouri office of prosecution services fund under the procedure established pursuant to subsection 2 of section 56.765, RSMo.

(2) The moneys deposited in the fund may be used by the prosecuting or circuit

attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the prosecuting or circuit attorney [and], employees' salaries, **and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.**

(3) This fund may be audited by the state auditor's office or the appropriate auditing agency.

(4) If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended balance shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year.

6. Notwithstanding any other provision of law to the contrary:

(1) In addition to the administrative handling costs provided for in subsection 5 of this section, the prosecuting attorney or circuit attorney may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, which along with the face amount of the check, shall be turned over to the party to whom the bad check was issued;

(2) If a check that is dishonored or returned unpaid by a financial institution is not referred to the prosecuting attorney or circuit attorney for any action pursuant to the provisions of this section, the party to whom the check was issued, or his or her agent or assignee, or a holder, may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, not to exceed twenty-five dollars, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.

7. [In all cases where a prosecutor receives notice from the original holder that a person has violated this section with respect to a payroll check or order, the prosecutor, if he determines there is a violation of this section, shall file an information or seek an indictment within sixty days of such notice and may file an information or seek an indictment thereafter if the prosecutor has failed through neglect or mistake to do so within sixty days of such notice and if he determines there is sufficient evidence shall further prosecute such cases.

8.] When any financial institution returns a dishonored check to the person who deposited such check, it shall be in substantially the same physical condition as when deposited, or in such condition as to provide the person who deposited the check the information required to identify the person who wrote the check.